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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL [redacted] NO. 1113 OF 2003

APPELLANTS (In Jail)

1. Ghanshyam alias Kotwal, son of Jaharsingh Parthi aged 24 years, R/o village Siltara, P.S. Dharsiva, Distt. Raipur (C.G.)

2. Santarulal son of Jaharsingh aged 30 years, R/o village Siltara, P.S. Dharsiva Distt. Raipur (C.G.)

3. Ram Banwas son of Mayalal Parthi aged 52 years, R/o village Khisora, P.S. Deokar District Durg (C.G.)

VERSUS

RESPONDENT
Prosecution

State of Chhattisgarh, through P.S. Simga, Distt. Raipur (C.G.)

Present:
Shri Yogeshwar Sharma, counsel for the appellants.
Shri Sushil Dubey, G.A. for the State/respondent.

ORAL JUDGMENT
(16.08.2007)

Dhirendra Mishra,J

This appeal under Section 374(2) of the Code of Criminal Procedure Code is directed against the judgment of conviction and order of sentence dated 23.8.2003 passed in Sessions Trial No. 203/2002 whereby the learned I Additional Sessions Judge, Baloda Bazar after holding appellants Ghanshyam, Santrulal and

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Ram Banbas guilty of the offence under Section 395 of the IPC, sentenced each of them to undergo R.I. of ten years and pay a fine of Rs.1,000/-, in default of payment of fine to further undergo R.I. of one year.

2. Case of the prosecution in brief is that complainant Kumar Singh (PW-2) was residing with his family in the farm house of Rameshwardas Agrawal on the guard duty. In the intervening night of 15/16th October 2001 at about 1.00 a.m. wife of Kumar Singh, Krishnabai (PW-13) raised an alarm that thieves have entered in the home, on which the complainant woke up and saw that 5-6 persons armed with lathi were standing near his cot. They pushed him inside the room where other labourers were sleeping and made a search of the room. Thereafter, they broke open door of the other room with the help of crowbar and stone and took out jewelry and cash amount from a box. They also looted jewelry and cash of daughter-in-law of the complaint. The dacoits were 10-12 in number. After the incident the dacoits locked the complainant and others in a room and fled from there. At the time of incident they had covered their faces. On the next morning, a report was lodged by Kumar Singh at Police Station Simga against the unknown dacoits vide Ex.P/22. On 24.10.2001 the accused persons were apprehended and on interrogation they confessed commission of two offences, first pertaining to robbery committed by them along with others near Hathband railway station and second pertaining to the house of Rameshwar and

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Kumar Sai. On the basis of memorandum statement of appellant Ghanshyam (Ex.P/1), a brown jerkin was seized under Ex.P/2. Similarly, on the basis of memorandum of appellant Ram Banbas (Ex.P/3), silver ornaments were taken into possession vide Ex.P/12 and on the memorandum of appellant Santrulal silver necklace two in number, silver *lachcha* two in number and ear ring *(jhumka)* two in number, total valuing at Rs.1300/-, were seized vide Ex.P/6. The seized articles were identified by Krishnabai (PW-13) vide Ex.P/24 in a test identification conducted by Executive Magistrate A.S. Paikra (PW-9). Similarly, other silver ornaments were identified by Krishnabai vide Ex.P/25. The test identification parade of appellant Ghanshyam was also conducted by the Executive Magistrate A.S. Paikra (PW-9) on 24.10.2001 where witnesses Kuntibai (PW-3), Ubarandas (PW-12) and Hargovind (PW-11) correctly identified appellant Ghanshyam.

3. Learned counsel for the appellants submits that in the FIR of Ex.P/22 it is mentioned that all the dacoits had covered their faces at the time of incident and thus there was no occasion for the witnesses to recognize appellant Ghanshyam in the test identification parade or in the Court and the Court below was not justified in basing conviction of appellant Ghanshyam on the identification during trial. He further argued that conviction of appellant Santrulal and Ram Banbas is based on the recovery of looted articles, however, there is no evidence that the articles allegedly seized from these appellants were in fact the looted

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articles as the test identification of these articles was conducted without mixing proper numbers of similar articles with the seized articles, as such the identification of these articles is vitiated and conviction of the appellants cannot be based on such identification. He further argued that there is no evidence to show as to under what circumstances the accused persons were arrested and on the identical evidence, other four accused persons namely Radhelal, Rajkumar, Chandra Prakash and Raju have been acquitted.

4. Reliance is placed on the judgment reported in **2007(1) ANJ (SC) 345** in the matter of **State of Rajasthan Versus Netrapal and others**.

5. On the other hand, learned counsel for the State supports the impugned judgment of the trial Court.

6. I have heard learned counsel for the respective parties and perused the material available on record including the impugned judgment.

7. Conviction of the appellants is based on the statements of Kumar Singh (PW-2), Kuntibai (PW-3) and Krishnabai (PW-13), who are eyewitnesses of the incident. Kumar Singh is the complainant who has reiterated his version given in the FIR, which has already been reproduced in the foregoing paragraph. He has described the looted articles in paragraph 2 of his deposition and

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 5	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

has proved the FIR of Ex.P/22. PW-3 Kuntibai has stated in her statement on oath that she woke up at the time of incident as her little daughter had passed urine, at that time she saw through the door that 5-6 unknown persons were standing beside the cot of her husband, on which she raised an alarm and her husband got up. The unknown persons claimed themselves to be police personnel, however, they had covered their faces. They caught her husband by neck and brought him in the same room where she was standing. After hearing the noise, labourers in the other room also woke up, the dacoits confined them in another room, they looted her ear ring, clip, *lachcha* of her daughter, anklet & necklace of her daughter-in-law and they also looted cash amount. All the accused persons were holding lathi and broken bottles and three other persons were standing with axe on the gate. She has further stated that the person present in the Court namely Ghanshyam is the same person who had not covered his face at the time of incident and was standing in front of the light holding a broken bottle. However, she has stated that she could not recognize other accused persons as all of them had covered their faces. She has further stated that she recognized her looted articles during identification vide Exs.P/23, 24, & 25. This witness has correctly identified accused Ghanshyam in the test identification parade conducted by the Executive Magistrate A.S. Paikra (PW-9) vide Ex.P/23.

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश ६	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

8. PW-12 Ubarandas has also stated that accused Ghanshyam had not covered his face and he was wearing a jacket at the time of incident. In the test identification parade he had identified Ghanshyam to be the person who was involved in the dacoity. The above two witnesses have been cross-examined by the defence, however, the defence could not elicit anything which makes the evidence of these two witnesses untrustworthy or unreliable.

9. Thus, from the statements of Kumar Singh (PW-2), Kuntibai (PW-3) and Krishnabai (PW-13), participation of accused/appellant Ghanshyam in the crime in question is established.

10. So far as conviction of the appellants Santrulal and Rambanbas is concerned, the same is based on the recovery of looted articles on the basis of their memorandum statements of Exs.P/6 & P/12, respectively. The articles seized from these accused persons have been correctly identified by PW-3 Kuntibai as also PW-13 Krishnabai who have categorically stated that the looted articles were put for identification and the same were duly identified by them. The looted articles have also been exhibited during trial. The identification of these articles as also the identification of accused Ghanshaym was conducted by the Executive Magistrate A.S. Paikra (PW-9), who has proved the documents and stated that all these articles and accused Ghanshyam were correctly identified by the witnesses. The version of these witnesses remained unchallenged as there is no cross-examination of these witnesses by the defence side.

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11. Thus, from the statements of Kuntibai and Krishnabai, the recovery and identity of the looted articles from the custody of accused/appellant Santrulal and Ram Banbas, is duly proved, therefore, in the considered opinion of this Court learned Sessions Judge has not committed any illegality or infirmity in convicting the appellants for the aforesaid offence.

12. In the cited judgment of State of Rajasthan Vs. Netrapal and others (supra), the Hon'ble Supreme Court while considering the appeals preferred by the State of Rajasthan against the judgment of acquittal by the High Court, has rejected the appeals and confirmed the judgment of acquittal by extending benefit of doubt in the matters of identification of accused persons, recovery of articles at their instance, identification of articles and ornaments as in the facts of that case it was held by the High Court that in the absence of light identification of the accused was not possible at the time of incident. Similarly, seizure of the looted articles and identification of the same were disbelieved with an observation that the accused persons were arrested after 7-8 days of the incident but their arrest was shown much later and the accused persons were detained in the police station in the meanwhile. However, the present case is distinguishable on facts as in the instant case the appellants were arrested only on 24.10.2001 and on the same day test identification of accused Ghanshyam and identification of the seized articles were conducted and they were duly identified by the witnesses.

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	13. However, taking into consideration age of the accused persons who were 24, 30 and 52 years old at the time of incident and also considering the fact that they have been convicted for the first time in this offence and they do not have any criminal antecedent, which is not disputed by learned counsel for the State, the appeal is partly allowed. Conviction of the accused/appellant under Section 395 of the IPC is maintained and sentence of ten years' R.I. awarded under this section is modified and they are sentenced to undergo seven years' R.I. and pay a fine of Rs.1000/- and in default thereof, to further undergo R.I. of one year. **Sd/-** **Dhirendra Mishra** **Judge**	